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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/696,587

Filing Date: October 30, 2003

Appellant(s): WIRTH ET AL.

MAILED

JUL 31 2007

GROUP 3700

Michelle Lester
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 09/07/2006 appealing from the Office action mailed on 04/07/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

6,739,075 B2	SIZEMORE	5-2004
4,897,937	MISEVICH ET AL.	2-1990
5,369,895	HAMMERSCHMIDT	12-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. Claims 1-4, 11, 12 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Sizemore (6,739,075 B2).

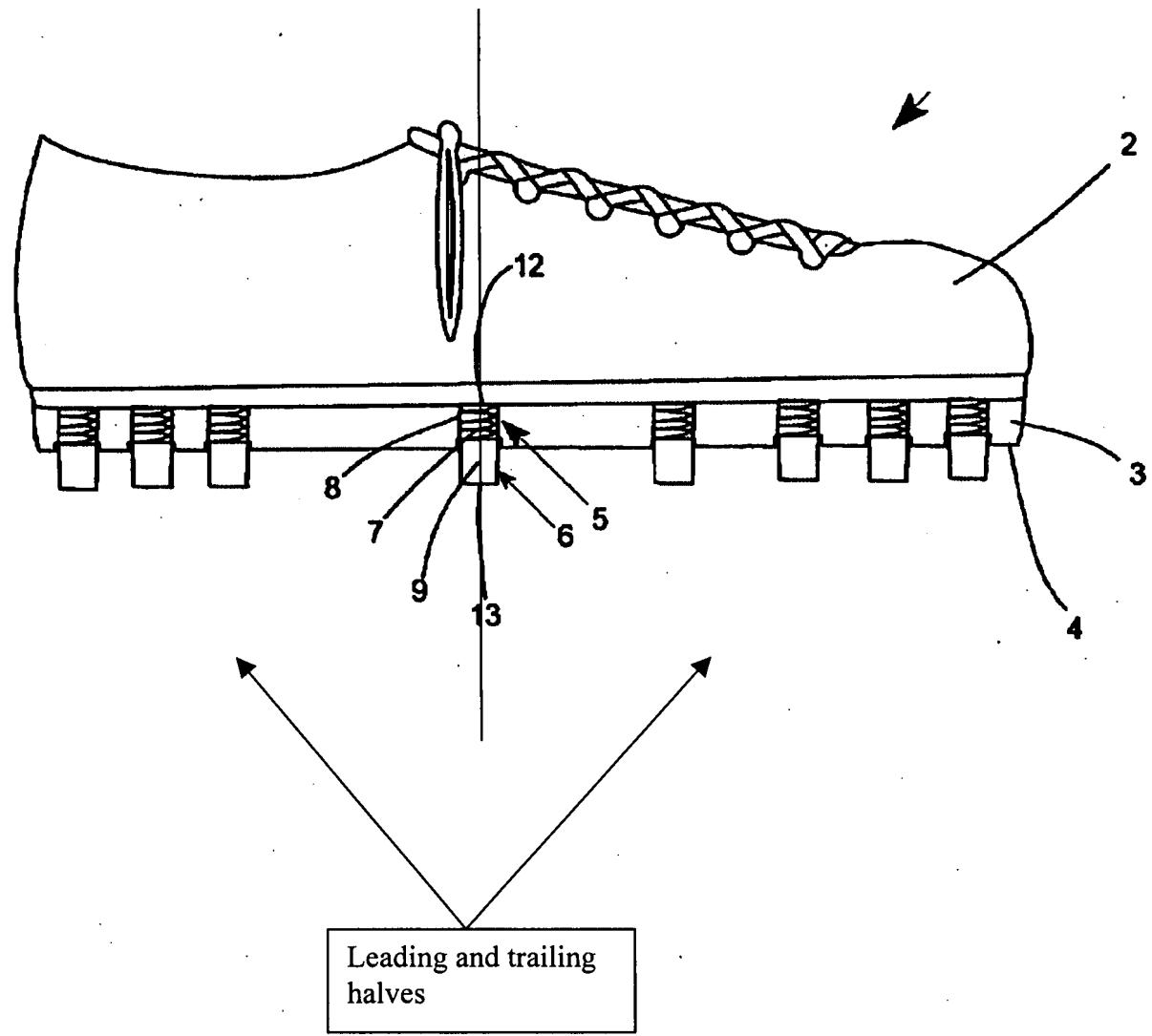
Regarding claims 1-4, Sizemore teaches a shoe capable of being used as a push block device for displacing a workpiece relative to woodworking equipment, comprising: a main body having a proximal end, a distal end, a longitudinal axis, and a first, generally flat working surface 4; a handle component 2 extending from the main body whereby when the first working surface is disposed in parallel facing relation to a top surface of a workpiece, the handle component is disposed predominantly vertically above the main body; and a heel component 6 extending from the main body so as to have a first, operative position, wherein the heel projects vertically below a first plane of the first working surface, and a second, stored position wherein the heel is disposed in or vertically above the first plane, the heel defining a second working surface disposed in a second plane defined at an angle with respect to the first working surface.

See Fig. 1.

Regarding claim 11, the retention plate (the plate on the top of element 3) is best seen in Fig. 1.

Regarding claim 12, element 3 is considered a slip resistant pad since it is made of rubber. See Fig. 1 and col. 2, lines 47-55.

Regarding claim 15, see attached Fig. 1.



Claim Rejections - 35 USC § 103

2. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sizemore in view of Misevich et al. (4,897,937), hereinafter Misevich.

Sizemore teaches a shoe capable of being used as a push block device for displacing a workpiece relative to woodworking equipment, comprising: a main body having a proximal end, a distal end, a longitudinal axis, and a first, generally flat working surface 4; a handle component 2 extending from the main body whereby when the first working surface is disposed in parallel facing relation to a top surface of a workpiece, the handle component is disposed predominantly vertically above the main body; and a heel component 6 extending from the main body so as to have a first, operative position, wherein the heel projects vertically below a first plane of the first working surface, and a second, stored position wherein the heel is disposed in or vertically above the first plane, the heel defining a second working surface disposed in a second plane defined at an angle with respect to the first working surface.

See Fig. 1.

Sizemore fails to teach molding a slip resistant pad over the working surface 4. Misevich teaches molding a slip resistant pad over a working surface. See col. 2, lines 2-15. Therefore, it would have been obvious to one skilled in the art to mold a slip resistant pad over a working surface as taught by Misevich to the Sizemore's shoe to prevent slipperiness.

3. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sizemore in view of Hammerschmidt (5,369,895)

Sizemore teaches the invention substantially as claimed except for a method of making the main body and the handle. Hammerschmidt teaches molding plastic to make a main body and a handle. See col. 2, lines 43-50. Therefore, it would have been

obvious to one skilled in the art to manufacture the main body and the handle of Sizemore by molding plastic as taught by Hammerschmidt since such practice is well known in the art.

Allowable Subject Matter

4. Claims 13 and 14 are allowed.
5. Claims 7-10, 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(10) Response to Argument

Regarding claim 1, the Applicant argues that Sizemore does not teach using his shoe as a push block device. This argument is not persuasive. The teachings of prior art are either explicitly in the references or in the knowledge generally available to one of ordinary skill in the art. In this case, the teachings are in the knowledge of one of ordinary skill in the art. For example, in a wood workshop a carpenter may use any available object such as a small block of wood or an un-used thick book or a folded flap of a carton box to advance a workpiece into a saw when conventional push block devices are not available in the workshop. Therefore, if nothing is available but a shoe in a wood workshop, one of ordinary skill in the art will use the shoe as a push lock device.

The Applicant argues that the upper shoe of Sizemore is not a handle. This argument is not persuasive. As defined by the Applicant that a "handle" is a part for

holding; or a part of a thing which is held by a hand, the upper shoe of Sizemore meets the Applicant's definition. One of ordinary skill in the art could hold the upper portion of the shoe to move it from one shelf to another or to push the shoe forward to advance a workpiece into a saw.

The Applicant argues that the shock absorbers of Sizemore do not have a second working surface being disposed in a plane defined at an angle with respect to the first working surface of the main body. This argument is not persuasive. The phrase "at an angle" is a broad phrase. That angle could be 60 or 90 or 120 degrees. Therefore, whether the shock absorbers of Sizemore are skewed or not, they are at an angle with respect to the first working surface.

The Applicant argues that the shock absorbers of Sizemore are intended to be engaged at their bottom surface and cannot be engaged at their peripheral surface. This argument is not persuasive. The shock absorbers of Sizemore are intended to be engaged at their bottom surface and their peripheral surface. Elements 10 and 11 in Fig. 4 prevent the shock absorbers pivoting out of element 3 if the peripheral surface of the shock absorbers engages an object. Since the shock absorbers can engage an object at their peripheral surface, they can engage a trailing edge of a wooden block to advance the wooden block into a saw.

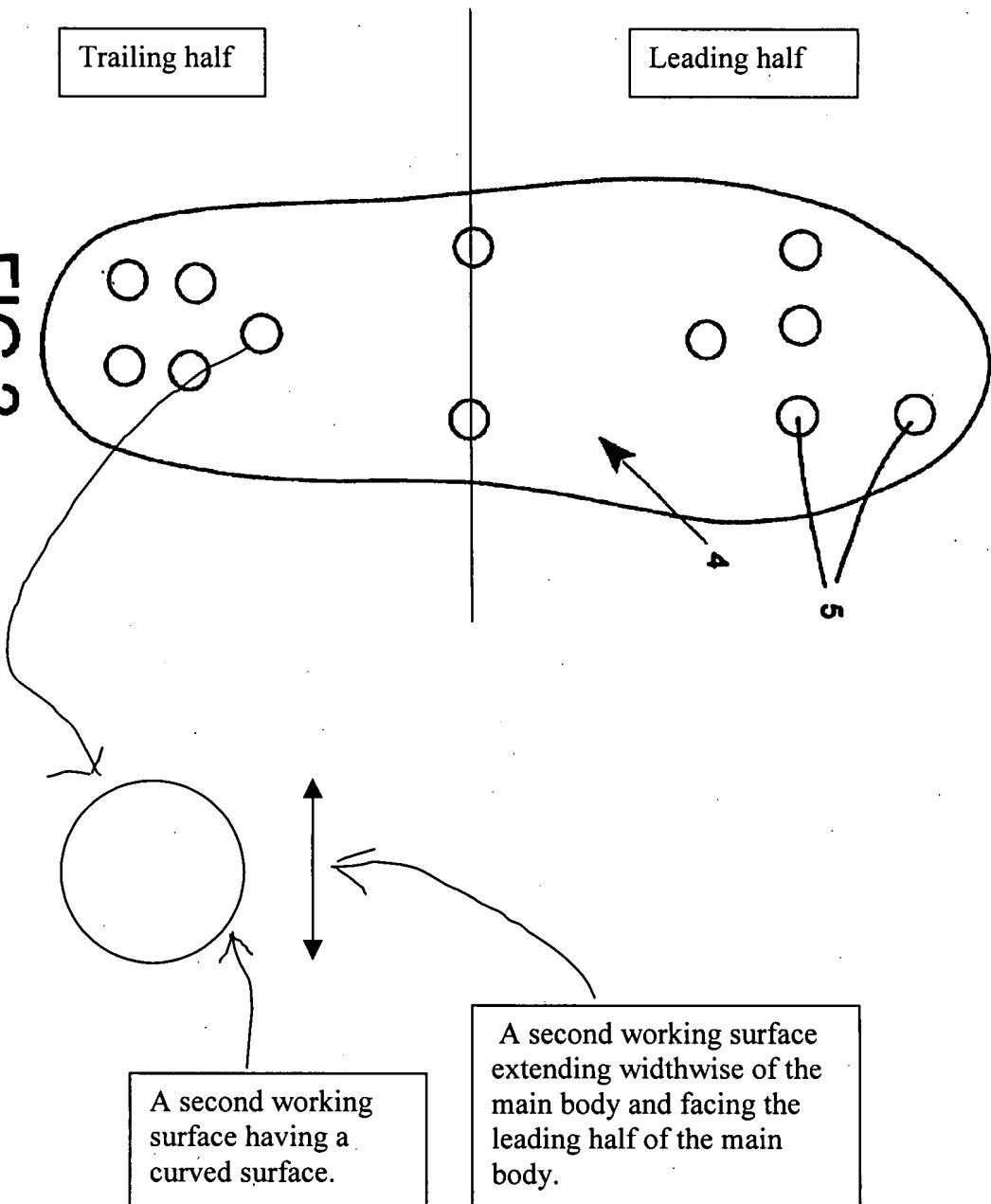
Regarding Applicant's argument with respect to claim 11, Applicant argues that the plate 12 in Sizemore does not retain the heel 6 inside the main body 3. This argument

is not persuasive. The plate 12 restricts the vertical movement of the heels 9 into the handle 2. Therefore, the plate 3 retains the heels 6 in the main body.

Regarding Applicant's argument with respect to claim 12, the Applicant argues that since element 10, which is a part of the main body 3, is the retention plate and therefore element 3 cannot be molded over itself. This argument is not persuasive. Firstly, the retention plate is element 12 but not element 10 as asserted by the Applicant. Secondly, claim 12 calls for the slip resistant pad being molded to the retention plate but not the main body. It is to be noted that the term "said plate" in claim 12 refers to the retention plate in claim 11. Therefore, the Examiner properly interprets claim 12 since element 3 is molded over the retention plate 12 but not itself.

Regarding Applicant's argument with respect to claim 15, the Applicant argues that Sizemore does not teach the second working surface extending widthwise of the main body and facing the leading half of the main body. This argument is not persuasive. Since the Applicant does not define whether the second working surface is a plane surface or a curved surface, Sizemore's reads on claim 15. See below sketch.

FIG 2



Regarding Applicant's argument with respect to claim 5 and 6, the Applicant argues that the Examiner improperly applies Misevich since it teaches providing a slip resistant surface of an insole. This argument is not persuasive. Misevich teaches providing a slip resistant pad for an outsole and an insole of a shoe as shown in col. 5 and Figs. 11 and 12.

Regarding Applicant's argument with respect to claim 16, the Applicant argues that it would not have been obvious to combine Sizemore and Hammerschmidt. This argument is not persuasive. Sizemore teaches that the material of the element 2 (upper part of the shoe) and element 3 (the sole of the shoe) is rubber which is plastic. See col. 2, lines 47-53. Hammerschmidt teaches that if the material of the upper part and the sole of the shoe is plastic, then the parts can be molded. See col. 2, lines 26-55. Therefore, the Examiner properly combines Sizemore and Hammerschmidt.

Although the Applicant does not bring up the issue of nonanalogous art between a push lock device and a shoe, the Examiner would like to point out that they are analogous art in this case since the shoe is reasonably pertinent to the particular problem with which Applicant concern which is to prevent fingers of a saw operator come too close to a saw blade.

For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,

Phong Nguyen



July 5, 2007

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